Important considerations ahead of IRRD Level 2 and 3 consultations

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Introduction

The Insurance Recovery and Resolution Directive (IRRD) (referred to as the Directive) was published in the Official Journal (OJ) in January 2025, and shall apply from 30 January 2027.

After the publication in the OJ, the next phase is the development of technical standards and guidelines by the European Insurance and Occupational Pensions Authority (EIOPA). During this phase, there will be consultation with industry which will allow stakeholders to provide feedback on key topics.

Ahead of these consultations, **Insurance Europe sets out its views on the way forward on important areas: timing, key definitions, minimum market coverage, subsidiary planning requirements, financing arrangements, critical functions and other topics**. For each of these areas, there is a description of the issue and its potential consequences as well as an initial industry proposal to address the concerns.

The purpose of this paper is to provide industry views on some important areas to help shape the development of technical standards and ensure that the implementation of the Directive is both practical and aligned with the operational realities of the insurance industry.

In general, it is important that the IRRD avoids excessive administrative burden for industry and National Competent Authorities (NCAs). The framework should be unique to the insurance sector and reflect its differences from other financial sectors. For example, insurance resolution allows more time to find solutions compared to banking resolution; therefore, the same level of detail and planning is not required.

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Area 1 - Timing

Issue

As publication in the Official Journal was in January 2025, leading to an implementation date in January 2027, this means either:

1. EIOPA will schedule an accelerated completion of the phases for technical standards and guidelines compared to the required time period (instead of within 18/24/30 months of the Directive publication); or
2. The technical instruments may not be completed before the expected implementation date. The third phase is required within 30 months of publication (ie by July 2027) which could be incomplete at the Directive implementation date, scheduled for January 2027.

Consequences

The details of the requirements relating to the preparation of the first pre-emptive recovery plan are still uncertain. Industry notes that for many undertakings this will be a novel exercise, and undertakings will have to implement all the processes which will require time, resource and budget planning. Furthermore, the lack of clarity might lead to inconsistent standards across EU Member States, particularly harming the consistent application of the IRRD and regulatory convergence. Further detail on these consequences is provided in the Insurance Europe paper published in April 2024.

Proposal for way forward

Insurance Europe recommends that the first pre-emptive recovery plans be prepared in 2028 at the earliest. In practice, this would mean by mid-2028 at the earliest, given existing reporting requirements in the first half of each year.

A transition period at least over the course of 2027 would ensure that EIOPA's regulatory and implementing technical standards (RTS and ITS) and guidelines will be finalised by the time the first plans are drawn up and any requirements included in these technical instruments can be taken into account.

Insurance Europe also notes that the development of the pre-emptive recovery plan for most insurers will be an iterative process, which is expected to be finetuned over a period of many years, through discussion between companies and NCAs. Supervisory expectations on the first version of the plan should reflect this.

Area 2 – Unclear definitions

Issue

The definitions for some of the important concepts and requirements set out in the Directive are still unclear. Further guidance on these definitions is required.

Consequences

Ambiguity could lead to higher costs and unnecessary confusion for undertakings when implementing the IRRD.

Proposal for way forward

Clarity for the following definitions is needed to avoid ambiguity and allow for consistency in the Directive's implementation. The guidance provided should allow for flexibility in the application and understanding of the definition for undertakings to reflect their risk profile and organisational structure.

The industry would suggest establishing definitions as follows:

- "Compulsory minimum coverage" for the write-down or conversion tool should:
  - be a clear and consistent metric; and
  - clarify how the cut-off of the mandatory minimum amounts should be made before the resolution starts
- "Regional level" for the exclusion of Small and Non-Complex Undertakings (SNCUs). Guidance should be defined to clarify the scope of this "level" and the analysis supporting its application (currently an EU-wide overview of SNCUs is lacking). For example, if there are regions within a Member State where NCAs may require plans from SNCUs due to concentration of coverage.

- "Material change" that triggers a pre-emptive recovery plan update in line with Article 5(4) should be defined to:
  - ensure a "material change" at a subsidiary-level will not require an update of the entire group plan. Instead, any updates to the group plan should to be limited to the content referring to the subsidiary in question.
  - clarify any similarity or difference with the recovery plan in new Article 136a of the Solvency II Directive. Instead of "material change", Solvency II refers to "deterioration of solvency position".
- "Remedial actions" required within the pre-emptive recovery plan content. The definition should be clarified in the context of the RTS (Article 5.12) and Guidelines (Article 5.11), both quantitatively and qualitatively. The definition should consider proportionality, with a narrower scope of actions to be assessed for less complex undertakings and allow for some flexibility in the application, given that flexibility is also provided for the indicators triggering the remedial actions (Article 5.8).

Area 3 – Minimum market coverage requirements

Issue

It remains very unclear which undertakings will be in scope of the minimum market coverage requirements. EIOPA is tasked with developing a methodology for calculating the minimum market coverage in an RTS.

One source of unclarity is whether minimum market coverage will encompass subsidiaries within group plans. Article 5 (2) and Article 9 (2) of the IRRD leaves the situation unclear by stating that subsidiaries "may be taken into account".

For example, if a Member State is considered with over 60% of the market coverage from subsidiaries of group entities regulated in other Member States, it is unclear whether the national supervisor would require pre-emptive recovery plans from any additional undertakings. The same applies for resolution plans, for which the minimum market coverage is 40%.

Consequences

The Directive allows possible ambiguity for NCAs on assessing the market coverage to ensure the minimum market coverage. This could lead to inconsistent regulatory application across Member States, creating uncertainty for undertakings, including those operating across multiple Member States.

Article 7 of the Directive provides that a group pre-emptive recovery plan shall identify remedial actions that may be required to be implemented at the level of that ultimate parent undertaking and at the level of its individual subsidiaries. When assessing the minimum coverage requirements, Article 5 (2) states that the local supervisor may take into account subsidiary undertakings that are part of a group for which the ultimate parent undertaking is drawing up and maintaining a group pre-emptive recovery plan. Article 9(2) includes a similar wording for the resolution plan. Disregarding these subsidiaries could lead to NCAs including many smaller entities, for which a plan might not be justified, solely to meet the market coverage target.

Additionally, some undertakings will only know if they are in scope once the European Commission endorses the RTS and the NCA has applied the Directive and RTS, potentially after the IRRD already applies.

Proposal for way forward

The industry supports the following approach to defining the scope of the minimum market requirements for pre-emptive recovery and resolution planning in each jurisdiction:

To reach the minimum requirement, the calculation should **first consider** the groups and subsidiaries for which a group plan is already requested by an NCA. If the sum of the market coverage of these plans does not meet the minimum requirement, **only then** should the NCA consider requesting pre-emptive recovery plans and information related to resolution plans from less material undertakings, groups or subsidiaries without group plans.

As pointed out in Area 1 above, NCAs should clarify which undertakings will be in scope well in advance of implementation. This will ensure that groups and solo undertakings can prepare for the plans required in each Member State during the proposed transition period.

Area 4 - Subsidiary Planning Requirements

Issue

Clarification is needed on subsidiary planning requirements when a group plan is already in place. Article 7(5) of the IRRD states that NCAs (other than the group supervisor) may request a subsidiary-level plan when the group plan "does not sufficiently address its concerns".

Consequences

The interpretation of Article 7(5) could lead to subjective and divergent interpretations from NCAs requiring subsidiary-level planning. Such subjectivity and divergence could challenge the overarching objective of consistent and convergent regulation across the EU. Furthermore, any extensive requirements to create subsidiary-level plans where a group plan exists will create additional and unnecessary regulatory burden, contrary to the Commission's wider policy objective of reducing regulatory burdens.

Proposal for way forward

For most groups, it is preferable that where an NCA considers that a group plan does not appropriately reflect the subsidiary under its supervision, the issues are addressed by amending the group level plan. Only where concerns are not addressed and all means of settlement of disagreement between NCAs are exploited, an NCA of a subsidiary might consider requesting specific plans at the subsidiary level.

Other groups have noted that from a cost-benefit perspective, it may be preferable not to integrate all the information in a single recovery plan, but instead to include only the information considered relevant to safeguarding the group in their group recovery plan. In this case, where an NCA considers that a group plan does not appropriately reflect the subsidiary under its supervision, the group may prefer to develop local pre-emptive recovery plans.

The requirement for a subsidiary-level plan should have no direct impact on the existing group plan in place (especially in cases where different Member State NCAs are involved).

Possible steps for including subsidiaries in group pre-emptive recovery plans:

- Step 1 ("Group Plan"): Group pre-emptive recovery plan is **accepted** by the group supervisor and the NCAs (this would mean **no further actions** are necessary for subsidiaries).
- Step 2 ("Ways forward to address the issues"): If the group pre-emptive recovery plan is **not accepted** by NCAs, and all means to settle a disagreement between the lead NCA of the group and the NCA of the subsidiary have been exploited, then following discussions with the insurer, the lead NCA should request either:
    - the addition of Subsidiary-Level-Annexes to the original document (within the group pre-emptive recovery plan), limited to addressing the specificities of the subsidiary that are deemed to be insufficiently addressed by the Group plan; or
    - the production of a local recovery plan that would address the concerns of the supervisors.

Additionally, it should be clarified that the Directive implies entities must be within the EU and fall under the scope of Solvency II to be included in the group plan.

Area 5 – Financing arrangements

Issue

The Directive foresees that the "no creditor worse off" (NCWO) compensation for policyholders under freedom of services/ freedom of establishment (FoS/FoE) must be provided by the home Member State financing arrangement. However, it is not clear how financing arrangements between host and home Member States will be set up to ensure that there are not gaps, particularly for policyholders under FoE/FoS (for example, some policyholders in host Member States may not be fully protected/covered by the home arrangement)

In addition, the Directive scope also covers "branches of insurance and reinsurance undertakings that are established outside the Union". However, there is a lack of clarity regarding how this applies to the financing arrangements in the Member State where those branches are established, which may lead to inconsistent implementation across Member States and increase the regulatory burden.

Consequences

There is a risk that industry-financed resolution arrangements will be set up, supported by large cross-border insurance groups in some Member States. This could lead to cross-subsidies across Member States and additional costs for the respective policyholder cohorts. Such ambiguity could result in different interpretations by Member States, leading to varying requirements and an increased and unnecessary burden.

Proposal for way forward
As per the Level 1 Directive, it shall be the Member States to decide the features and design of the arrangement for resolution financing, especially the financing of the arrangement (ie ex-ante, ex-post, or combination of them). However, some clarification on how resolution financing would be handled in the context of a resolution involving multiple Member States could be helpful.

Area 6 - Critical Functions

Issue
The IRRD mandates EIOPA to develop guidelines to further specify the criteria for the identification of critical functions within 24 months after the Directive enters into force. The industry is sceptical regarding this mandate, as the markets in different Member States are very heterogenous and a uniform identification of critical functions across Europe is therefore impossible.

Consequences
The identification of critical functions will have a substantial impact on the respective markets. For example, according to Article 9 (2), all undertakings for which the "authorities assess that they perform a critical function" must have resolution plan and, therefore, a pre-emptive recovery plan.

An overly detailed and prescriptive approach by EIOPA would likely lead to results that are not sufficiently tailored to the reality in these markets, defeating the purpose of entrusting national authorities with the identification.

Proposal for way forward
EIOPA should at most aim to provide a high-level methodology, with national discretion, for NCAs to identify critical functions for their respective markets. The methodology should also be flexible to cater to national features, for example, the role of insurance in society and the financial markets. What is classified as a critical function in one Member State should not by default be classified as a critical function in other Member States. It should also be possible to conclude that there are no critical functions performed by insurers in a Member State.

The methodology should focus on the following:

- The substitutability criteria should always be accounted for in a critical function assessment and should not be jeopardised by the market share criteria.
- The systemic nature of critical functions, as defined in Article 2 (25), as "significant impact on the financial system or the real economy" including "effects on the social welfare of a large number of policy holders, beneficiaries or injured parties".

Other Areas

The industry highlights:

- The undertaking/group recovery and resolution plans are highly confidential documents, with a communication list that should be limited to a strict minimum (as per eg Article 7.6).
- Responsibility for demonstrating that the resolution plan can effectively be implemented should lie with resolution authorities without burden on individual undertakings/groups.

Additionally, the industry would appreciate that EIOPA considers the special features of the insurance business and the differences between the insurance markets. The European insurance sector is well-regulated and supervised. As insurance crises are longer-term, any impediments can regularly be removed during the crisis. Insurers should focus their structures primarily on market needs and not on possible measures in potential crises. This is particularly important in the development of:

- The recoverability assessment – as part of the RTS to specify content of the pre-emptive recovery plan and remedial actions.
- Guidelines for criteria for the assessment of the resolvability.
- Guidelines to further specify details on measures to remove impediments to resolvability.